

Chapter 2: Eligibility

Introduction

For an application to be eligible it must meet three requirements. The application must:

- be submitted by an eligible applicant,
- consist of eligible CDBG activities, and
- address a CDBG national objective.

I. Applicant Eligibility

Idaho “non-entitlement” cities and counties are the only eligible applicants for the Idaho Community Development Block Grant (ICDBG) funds.

Note: Boise, Coeur d’Alene, Idaho Falls, Lewiston, Meridian, Nampa and Pocatello are considered “entitlement cities” and receive CDBG direct from HUD, therefore are not eligible for ICDBG. Indian tribes also receive CDBG, therefore are not eligible for ICDBG.

Cities and Counties shall only apply for an ICDBG for a project which lies within their jurisdiction or impact area boundary. The project must address the needs of the residents of their jurisdiction or impact area.

Cities and Counties shall apply for only one (1) project from each funding set-aside or category (public facilities, senior and community centers, economic development-downtown revitalization and imminent threat) with the following exception:

Counties may apply on behalf of more than one (1) unincorporated community or unincorporated urbanized area; however, counties may apply for only one (1) ICDBG which has county-wide benefit.

Cities and Counties must be eighty percent (80%) drawn down from any prior public facility ICDBG grants as of the last date for accepting applications.

For the economic development-job creation set-aside or category, cities and counties can apply for one grant in any quarterly application cycle. If the city or county has an existing economic development-job creation grant, that ICDBG grant must be under contract prior to submitting a new economic development-job creation application.

Any city or county with unresolved audit, disallowed costs or prior performance problems from any previous grant will be ineligible to apply for a new grant.

Joint Applicants

Multiple units of government (more than one city or county), may apply jointly for a grant when solving a shared problem that requires action from both the units of government in an area of overlapping jurisdiction, but only one unit must be designated as the responsible unit for administrative purposes. Written cooperation

agreements, which cover the entire project from application to operation and maintenance, must also be submitted. A joint application solely for administrative convenience, or where several jurisdictions are addressing similar but unrelated circumstances does not qualify as a shared problem and is therefore not eligible.

Sub-recipients

Entities other than cities or counties may not apply directly but may be involved in the execution of a project by mutual agreement with the eligible applying counties or cities. These other entities include special purpose districts or non-profits, such as water or sewer districts, senior citizen facilities, and fire districts. As a sub-recipient, they must comply with all ICDBG regulations and rules. These sub-recipients are the representatives of the beneficiaries of the project.

If your community meets all of the eligible applicant criteria, you should now determine if the activities are eligible.

II. Eligible Activities

For a complete list of eligible activities refer to Section 105(a) Housing and Community Development Act and 24 CFR 570.482 Eligible Activities.

General Description

ICDBG can be used for new construction, rehabilitation, reconstruction, remodeling, improvements, clearance and demolition, acquisition, and installation of public facilities, infrastructure, and/or utilities. Design professional, construction management and grant administration services are eligible as well.

Note: The Idaho CDBG program is structured to provide higher points for applications that are using the grant funds on bricks and mortar, not services or planning. See Chapter VI, Page 10 for scoring details.

Grant Funding Categories

Based on the assessment of Idaho cities and counties and to effectively serve primarily Idaho's low- to moderate-income households, Commerce has created five separate grant funding categories that a city or county can apply for:

- Public Facility
- Economic Development
 - Infrastructure for Jobs
 - Downtown Revitalization
- Community Center or Senior Citizen Center
- Imminent Threat (IT)

A. Public Facility Grant Category (public infrastructure, community facilities, and public utilities)

1. Public facility projects are those that construct or improve public infrastructure, facilities, or utilities including, but not limited to:
 - Water systems
 - Sewer systems
 - Street and sidewalks
 - Surface water drainage systems
 - Fire and EMT stations, (includes fire engines)
 - Medical and health facilities, (hospitals, clinics)
 - Homeless shelters
 - Domestic violence shelters
 - Child care centers
 - Youth centers
2. Use of CDBG to support affordable (benefiting LMI Households) housing;
 - a. Rehabilitation and Reconstruction to support the preservation of affordable housing.
 - b. Conversion of Existing Structures for Housing: A community may increase its supply of housing by converting buildings to affordable housing units.

- c. Support of New Housing Construction which is limited to:
 - i. Acquisition of land for housing.
 - ii. Extending infrastructure, including streets, to housing.
 - iii. Site Improvements.
 - iv. Water / sewer hook-ups – connecting individual properties (such as private homes) to service collection or distribution lines. Includes the construction or installation of waters wells or septic tanks.
 - (a) Eligibility based on individual household income not LMI area wide.
 - (b) Environmental and Davis Bacon rules apply.
- d. Using CDBG for New Housing Construction is generally prohibited with exception of two unique provisions under 24 CFR 570.204 and 207.

B. Economic Development Grants

There are two (2) types of Economic Development Projects:

1. Infrastructure for Jobs – The project assisted business must document the creation or retention of jobs, with 51% of the jobs for LMI persons.
 - a. Projects designed to construct or expand public infrastructure, such as water, wastewater, streets, power, railroads, or other infrastructure systems that are necessary for a specific business development or expansion.
 - b. Projects designed to construct or expand publicly regulated utilities such as natural gas, electrical systems or telecommunications that are necessary for a specific business development or expansion.
 - c. New construction, reconstruction or property acquisition of an industrial or business park owned by an eligible grantee or sub-recipient for which the park land or building will be leased to a business.

In order to be eligible, the following conditions and documentation must be completed and met:

- If required by Commerce, a fair market rent analyst must be prepared to demonstrate the rents are comparable to similar land or real estate in the area. Typically, rent payment must be at fair market value for the locality.
- Copy of the Lease Agreement.
- A Program Income Re-use Commitment Letter shall be developed and included in the application.
- Grant assisted construction must be general in nature and not specific to the business' criteria.
- Leasehold improvements are not an allowable ICDBG expense.
- Deed restriction or restrictive covenants may be placed on the land or real estate to ensure the continued ownership and use of property remain ICDBG eligible.

- Written property management policies and practices shall be included in the application.
- Proof of Ownership of Record for the real estate.
- Title Insurance Policy.
- Warranty Deed (or other Deed form).
- Deed of Trust (when trustee involved).
- An ASTM Phase I Environmental Assessment (for property acquisition).
- An Appraisal Report (for property acquisition).
- Commitment to Title Insurance Policy (for property acquisition).
- Real Estate Purchase Agreement (for property acquisition).

Note: The sale of an ICDBG assisted or improved land or real estate cannot occur without Commerce approval. If approved the sale of the land or real estate must be at the appraised value and monies received are considered program income and are subject to the terms of the grant contract/property agreement.

2. **Downtown Revitalization** – A downtown project is required to meet the slum and blight national objective. Meeting the objective is typically done by bringing up to standard at least two defined and documented sub-standard infrastructure systems, however, a downtown revitalization project is much more than just infrastructure improvements. It is about creating or retaining the economic vitality in your downtown. The grantee must have a downtown revitalization plan and identify how the proposed improvement will benefit downtown businesses and commerce.

C. Community and Senior Center Grants

1. **Community Center Grants.** New construction or improvements to an existing community center that is owned by a grantee or eligible sub-recipient for the use and enjoyment of the community's general public.
2. **Senior Citizen Center Grants.** New construction or improvements to an existing designated senior citizen center for the use and enjoyment of the community's senior population.
 - a. **Title to Public Facilities:** Nonprofit entities frequently hold title to and operate facilities such as senior centers for the handicapped, and neighborhood facilities. When such facilities are owned by nonprofit entities, they may qualify for assistance under this category only if they are made available to the general public. Where applicable, facilities owned by a nonprofit must be open for use by the general public during all normal hours of operation.
 - b. **Fees:** Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding L/M income persons from using the facilities, are not permitted.

- c. Kitchen Equipment: Typically equipment is not eligible for CDBG funding. However, commercial kitchen equipment that is permanently installed and considered part of the real estate (fixture) is likely eligible. Contact Commerce for determination.

D. Imminent Threat Grants

A project to address a natural caused recent event that has damaged public infrastructure or utilities creating a serious threat to the health and safety of a community.

Example: A flash flood wipes out the communities' drinking water reservoir and ICDBG funds are used to replace or repair the reservoir dam.

III. Other Eligibility Information

In addition to the above mentioned eligible activities, there is additional activity information to consider prior to applying for a project. Each activity must also be in compliance with the following conditions:

Facilities Containing both Eligible and Ineligible Uses can receive grant assistance if the eligible portion of the building is a designated and discreet area of the building and the applicant can determine the costs attributed to the eligible portion distinctly from the costs of the overall facility.

Special Assessments: ICDBG funds can be used to pay the special assessments on behalf of all properties owned and occupied by all low income (and if sufficient ICDBG available moderate income) households. Special Assessments means the recovery of the capital costs of a public improvement, such as sidewalks or water hook-ups or sewer connections, through:

A fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement (LID), or

A one-time charge made as a condition of access to the public improvement (hook-up or connection fee).

Special Requirements on using ICDBG for Special Assessments

Third party household income verification required, because project qualifies as LMI Housing.

ICDBG payment per household is 100%, therefore, cannot pay special assessments percentage based on an income sliding scale.

ICDBG rules are applicable including acquisition, environmental, and Davis-Bacon.

The ICDBG rules are even applicable to a project for which the improvements were not initially assisted with ICDBG funds.

Note: Special assessments typically do not include the periodic charges based on the use of public improvements, such as water or sewer user charges or property taxes.

If you plan to use ICDBG to pay for special assessments, contact Commerce.

Beneficiary Data must be collected and maintained by all grantees on the persons who will directly benefit from the grant project. This data must include information on race, gender, ethnicity and income data on all persons who are applicants for, participants in or beneficiaries of the grant project.

Combining CDBG Funds with Other Federal Money: ICDBG funds are frequently combined with funding from other federal programs to finance the construction public facilities. Water, sewer, and fire station projects are commonly funded with a combination of ICDBG, Idaho DEQ funding, and/or USDA-Rural Development funding. Because Congress authorizes these various programs under different statutes, different sets of federal requirements apply to each of them.

If ICDBG funds are commingled with those of other federal programs, or are used to jointly fund the same improvements, the statutory and regulatory requirements of the ICDBG program must be applied to the entire project, such as the NEPA Environmental Review and Federal Labor (Davis-Bacon) Standards.

However, if ICDBG funds are used to exclusively finance one type of improvement, and other federal funds are used to construct another type of improvement, and if the improvements are:

- not functionally dependent,
- bid out separately,
- not constructed concurrently, and
- if the design professional services for the improvement have been advertised and let separately,

it may be acceptable to deem the ICDBG project separate. Therefore ICDBG rules will only apply to the improvement paid with ICDBG funds. However, contact Commerce prior to making assumption that ICDBG funds will not be applicable to another project, phase, or schedule.

IV. National Objectives

An eligible project must serve one of HUD's three national objectives:

- A. Activities Benefiting Low- to Moderate-Income (LMI) Persons.
- B. Preventing or Eliminating Slum and Blight.
- C. Relief of Imminent Threats to Resident Health and Safety.

If your project does not meet any of these national objectives, it will be considered ineligible.

A. Activities Benefiting Low- to Moderate-Income (LMI) Persons

Low- and moderate-income projects benefit at least 51 percent low- and moderate-income persons. Household income is used to determine if a person falls in that category. If a household's income is 80 percent or less of the median county income, the household members are considered to be low- to moderate- income persons.

Low- and moderate-income benefit is achieved only if the project meets one of the following four criteria:

- LMI - Area Wide Benefit (at least 51% LMI)
- LMI -Limited Clientele
- LMI – Housing
- LMI - Jobs

Area Wide Benefit (at least 51% LMI)

(typical funding category – public facility or community center)

This is an activity or project that is available to benefit or serves all residents in a particular area (such as a city or special district) where at least 51% percent of the residents are low- and moderate-income.

Examples of typical area benefit activities include:

- Construction of a fire station that serves just the city and the city has an LMI of 54%.
- Rehabilitation of the drinking water treatment plant of the water district that has an LMI population of 57%

The LMI % of the service area can be determined by HUD based on current census data or an income survey of the service area or combination of both. Based on the service area of the project you may be able to use a combination of census data and income surveys of specific project areas to determine the LMI percentage of the project's service area.

See Commerce's website <http://www.commerce.idaho.gov/development-block-grants/census-income-data/> for city and county LMI % as determined by HUD based on census data. For surveys and methodologies see Chapter III.

Low- to Moderate-Income (LMI) Limited Clientele

(typical funding category – senior center or public facility meeting limited clientele or income qualifying requirements)

A LMI limited clientele activity is an activity that provides benefits to a specific group of persons rather than everyone in an area generally.

To qualify as a limited clientele the activity must meet one of the following tests:

Benefit a clientele group generally assumed to be comprised of low- and moderate-income persons. HUD recognizes the following groups under this category:

- elderly persons,
- homeless persons,
- persons with disabilities,
- migrant farm workers,
- abused children,
- battered spouses and
- illiterate persons.

Or

Require information on household size and income so that it is evident that at least 51% of the clientele are persons whose household income does not exceed the LMI income limit. Example: meeting the income eligibility requirements to qualify for family health services.

Or

Removal of material or architectural barriers of publicly owned non-residential buildings or facilities accessed by elderly or disabled persons. This also includes improvements to such facilities as well as common areas of an affordable multi-family housing complex.

LMI Housing

(typical funding category – public facilities)

Requires that eligible ICDBG activity supporting affordable permanent residential structures qualify as benefiting LMI households only to the extent that the housing is occupied by LMI households. Housing assisted by CDBG funds can be either owner- or renter- occupied and can be either one family or multi-unit structures. When housing is to be rented, in order for a dwelling unit to be considered to benefit a LMI household it must be occupied by the household at affordable rents. The grant

recipient is responsible for establishing the criteria it will use to determine rent affordability for this purpose and must make these criteria public.

Occupancy of the assisted housing by LMI households must meet the following general rules:

- All assisted single units structures must be occupied by LMI households,
- An assisted two-unit structure (duplex) must have at least one unit occupied by a LMI household, and
- An assisted structure containing more than two units must have at least 51 percent of the units occupied by LMI households.
 Exception: The new construction of non-elderly, multi-family rental structures need only have at least 20 percent of the units occupied by LMI households. However, the ICDBG portion of total development costs may not be greater than the portion of units occupied by LMI households.
- ICDBG assistance to two or more structures may be considered to meet the occupancy-by-structure test as though all of the assisted structures were in a single structure if buildings used for rental housing are under common ownership and management is located on the same or contiguous property.

LMI Jobs

(typical funding category - infrastructure for jobs)

The project or activity must help create or retain permanent jobs that are filled by at least 51 percent LMI persons. For LMI jobs an LMI person is defined by their family's income. To demonstrate that at least 51% of the jobs will be taken by LMI persons, documentation for each assisted business must include:

- An executed job creation agreement between the City or County and the business that at least 51% of the jobs on a full-time equivalent basis will be held by LMI persons. Also include with the agreement the proposed jobs to be created.
- A listing of current employees, their job positions, and if full-time or part-time at the time the CDBG application is submitted.
- Evidence supporting (Confidential Income Survey in Chapter IX.) the total number of jobs created and those “held by” LMI persons.
- A description of how the LMI status of those hired was determined by the state during the review of the recipient and how the total number of jobs was determined. (Commerce completes.)

(1) In counting the jobs to be used in the calculation for determining the percentage that benefit Low- to Moderate-income persons, the following policies apply:

- (a) Part-time jobs must be converted to full-time equivalents (FTE) (for example, a job that will require only working half time would count as only one-half job);
- (b) Only permanent jobs count; temporary jobs may not be included;
- (c) Seasonal jobs are considered to be permanent for this purpose only if the season is long enough for the job to be considered as the employee's principal occupation;

- (d) All permanent jobs created or retained by the activity must be counted even if the activity has multiple sources of funds; and
 - (e) Jobs indirectly created or retained by an assisted activity (i.e., “spin off” jobs) may not be counted (for example, jobs created by an unrelated company which supplies parts to the manufacturing firm being assisted).
- (2) Jobs “held by” Low- to Moderate-income persons: A job is considered to be held by a low- to moderate-income person if the person is, at the time their employment commences, a member of a household whose income falls at or below the applicable HUD income limits. The family’s entire income must be counted. (This is particularly important when dealing with part-time jobs.) The annual salary or hourly wage of the job that the person fills is irrelevant.
- (3) Special rules for retained jobs: In order to consider jobs retained as a result of CDBG assistance, there must be clear and objective evidence that permanent jobs will be lost without CDBG assistance. For these purposes, “clear and objective” evidence that jobs will be lost would include:
- (a) Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or analysis of relevant financial records which clearly and convincingly show that the business is likely to have a cut back employment in the near future without the planned intervention.
 - (b) That at least 51% of the current employees are LMI persons.
 - (c) An executed job agreement between the city or county and the business identifying the number of jobs to be retained, including a list of current jobs.
- (4) Presumed Low to Moderate income status: An alternative option for meeting the job creation national objective of benefitting low to moderate income families may be presumed in the following situations:
- (a) The business is in a census tract and block group (not the city or census tract) that has at least 20% poverty rate and isn’t in a census “central business district”; or
 - (b) The job holder resides in any census tract that is at least 70% low/mod or at least a 20% poverty rate.
- (5) If a job “held by” requirement does not work for the project there may be a second option that could meet the national objective. This option is jobs “available to”. Before selecting this option, contact a CDBG specialist as a number of requirements are necessary to meet this national objective.

B. Prevent or Eliminate Slum and Blight*(typical funding category – downtown revitalization)*

Slum and blight areas are geographical areas which have two or more deteriorated public infrastructure systems or a substantial number of deteriorating buildings. Generally these systems or buildings inhibit growth and are considered to be both an economic and social liability and may even be a health hazard. Projects that qualify under this national objective are required to use their funding for eligible activities that will remove or improve impediments that are contributing to the slum and blight conditions. Project may qualify under as area-wide or spot basis.

1. Projects that seek to eliminate slum and blight on an area basis must meet **all** of the following criteria in order to qualify under this objective:
 - a. Provide an Official Resolution by the governing body that the area is a “Re-Development Area” (sample resolution in Chapter VIII). The resolution must identify the specific redevelopment area (use street names to identify boundaries) and the infrastructure systems or buildings within the area that are sub-standard or deteriorating.
 - b. A detailed site plan or plat map of the Redevelopment Area.
 - c. The area must exhibit at least one of the following physical signs of blight and decay:
 - (1) The public improvements throughout the area must be in a general state of deterioration. To qualify, at least two public infrastructure systems must be considered sub-standard.
 - Or
 - (2) There must be a substantial number of deteriorated or deteriorating buildings throughout the area. To qualify, at least 25% of the building in the area must be sub-standard or deteriorated. Further the substandard building should be classified as suitable for rehabilitation or not suitable for rehabilitation.
 - d. Documentation must be provided in writing by the Grantee on what standards or conditions the sub-standard infrastructure systems or buildings are not meeting. Such standards include the American Disabilities Act, Idaho Public Works Standards, NPDES permit, etc. The documentation must be verified by a licensed design professional.
 - e. A minimum of ten (10) photos of the sub-standard systems.
 - f. The CDBG funds must be limited to correcting or improving the identified sub-standard infrastructure or building systems.
2. Projects that seek to eliminate slum and blight on a spot basis must meet **all** of the following criteria:
 - a. Project design must seek to eliminate specific conditions of blight or physical decay at individual locations rather than a general area not located in a slum or blighted area.

- b. The project is limited to acquisition, clearance, relocation, historic preservation or rehabilitation of a building to the extent necessary to eliminate specific public health and safety concerns.
- c. A resolution must be issued declaring the property or properties severely deteriorated including a description of the conditions.
- d. Documentation must be provided regarding all deteriorating and blight conditions including, but not limited to code inspections, structural inspections, appraisals and impact of the property on surrounding property health and safety. Documentation must be provided in writing by the Grantee on what standards or conditions the sub-standard infrastructure systems or buildings are not meeting. Such standards include International Building Code. The documentation must be verified by a licensed design professional.
- e. A minimum of ten (10) photos of the building.

C. Imminent Threat:

(typical funding category – imminent threat)

Cities or counties applying for imminent threat assistance must have an urgent need or imminent threat that presents a catastrophic or emergency situation which creates impending or immediate threat, danger or peril to human health or safety. Typically, the threat is caused by a natural disaster such as a flood, landslide, or wildfire.

1. In order for a project to meet the Imminent Threat national objective the following must be addressed and documented:
 - a. How the occurrence poses a serious and immediate threat to the health or welfare of the community;
 - b. The occurrence is of recent origin or recently became urgent (within 12 months before application submission);
 - c. How the community is unable to finance the activity on its own;
 - d. That other sources of funding are not available to carry out the activity;
 - e. An official declaration of emergency by the governing body, and
 - f. The occurrence is not a result of deferred maintenance or end of life cycle.

Costs incurred by a local government to deal with the imminent threat while the grant application was being prepared and reviewed can be authorized as eligible for block grant reimbursement by Commerce so they are included in the grant application and relate directly to the relief of the emergency. This does not place any obligation on the department to approve the ICDBG and any costs incurred before the grant approval are the responsibility of the local government until after the grant has been awarded and the costs have been approved.

V. Ineligible Activities

As a general rule, any activity not authorized on the Eligible Activities list is ineligible to receive grant funds. This section identifies two areas that are ineligible and provides guidance in determining eligibility of other activities frequently associated with community development projects.

A. Ineligible Activities that May Not be Carried Out Using Grant Funds:

1. Assistance to Government Buildings which covers any building or the portion thereof that is predominantly used for the general conduct of government. Such buildings include, but are not limited to city halls and other government headquarters where the governing body meets regularly, courthouses, jails, police stations and other state or local government office buildings. Other ineligible buildings include school buildings, school offices and university or college vocational-technical facilities. Removing architectural barriers and historic preservation involved with these types of buildings is eligible. If ICDBG funds are to be used to acquire real property that included an existing building and improvement, and if part of that building is to be used for the general conduct of government, then the acquisition cost attributable to the land is eligible as long as a national objective is met with the other eligible use of the property and buildings. Regarding building costs in mixed-use facilities, only the portion of the building required for the eligible activity may be paid for with grant funds.
2. Expenses of Local Government except as specifically authorized in this section or under OMB Circular A-87, if required to carry out the regular responsibilities of the unit of general local government.
3. Political Purposes including facilities or equipment used for political purposes and support of partisan political activities such as candidate forums, voter transportation or voter registration. Please note that a facility originally financed with grant funds may be used on an irregular basis to hold political meetings, candidate forums or voter registration campaigns as long as all parties and organizations have equal access to the facility and pay equal rent or use charges if any.
4. Churches and Religious Facilities including construction, rehabilitation and removal of architectural barriers and the operation of active churches or other structures/facilities used for religious purposes.
5. Equipment: The purchase of equipment with grant funds is generally ineligible. Construction equipment may not be purchased, but compensation for the use of such equipment through leasing, depreciation or use allowances under OMB Circular A-87 or A-122 as applicable for an eligible activity is an eligible use of grant funds. The purchase of construction equipment for use as part of a solid waste disposal facility is also eligible under Section 024. Any purchase of

equipment, fixtures, motor vehicles, furnishings or other personal property that is not an integral structural fixture is ineligible unless such items are necessary for use by a recipient or sub-recipients in the administration of activities assisted with grant funds under OMB Circular A-87 or A-122 as applicable or when eligible as firefighting equipment or as a public service under Section 304.

6. Operating and Maintenance Expenses: As a general rule any expense associated with operating or maintaining public facilities and services is ineligible. Ineligible operating and maintenance expenses include: maintenance of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped and parking and similar public facilities. Ineligible maintenance activities also include filling potholes in streets, repairing cracks in sidewalks, mowing recreational areas, replacing street light bulbs and paying salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.